

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #12	CCRB Case #: 201607995	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/15/2016 2:48 PM	Location of Incident: Grand Concourse between Kingsbridge Road and East 196th Street.	Precinct: 52	18 Mo. SOL 3/15/2018	EO SOL 3/15/2018	
Date/Time CV Reported Fri, 09/16/2016 5:35 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 09/16/2016 5:35 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			052 PCT
2. POM Joel Ayala	08262	954509	052 PCT
3. POM Edmundo Rivera	696	955382	052 PCT
4. SGT Charles Cavallaro	4758	938197	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro stopped the vehicle in which § 87(2)(b) was an occupant.	
C.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro stopped the vehicle in which an individual was an occupant.	
D.POM Joel Ayala	Abuse: Police Officer Joel Ayala stopped the vehicle in which § 87(2)(b) was an occupant.	
E.POM Joel Ayala	Abuse: Police Officer Joel Ayala stopped the vehicle in which § 87(2)(b) was an occupant.	
F.POM Joel Ayala	Abuse: Police Officer Joel Ayala stopped the vehicle in which an individual was an occupant.	
G.POM Edmundo Rivera	Abuse: Police Officer Edmundo Rivera stopped the vehicle in which § 87(2)(b) was an occupant.	
H.POM Edmundo Rivera	Abuse: Police Officer Edmundo Rivera stopped the vehicle in which § 87(2)(b) was an occupant.	
I.POM Edmundo Rivera	Abuse: Police Officer Edmundo Rivera stopped the vehicle in which an individual was an occupant.	
J.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro questioned § 87(2)(b)	
K. An officer	Abuse: An officer questioned § 87(2)(b)	
L.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro searched the vehicle in which § 87(2)(b) was an occupant.	
M.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro searched the vehicle in which § 87(2)(b) was an occupant.	
N.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro searched the vehicle in which an individual was an occupant.	

Officer(s)	Allegation	Investigator Recommendation
O.POM Joel Ayala	Abuse: Police Officer Joel Ayala searched the vehicle in which § 87(2)(b) was an occupant.	
P.POM Joel Ayala	Abuse: Police Officer Joel Ayala searched the vehicle in which § 87(2)(b) was an occupant.	
Q.POM Joel Ayala	Abuse: Police Officer Joel Ayala searched the vehicle in which an individual was an occupant.	
R.POM Edmundo Rivera	Abuse: Police Officer Edmundo Rivera searched the vehicle in which § 87(2)(b) was an occupant.	
S.POM Edmundo Rivera	Abuse: Police Officer Edmundo Rivera searched the vehicle in which § 87(2)(b) was an occupant.	
T.POM Edmundo Rivera	Abuse: Police Officer Edmundo Rivera searched the vehicle in which an individual was an occupant.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On September 16, 2016, § 87(2)(b) filed this complaint with the CCRB via email (**01 Board Review**) on behalf of himself and § 87(2)(b), § 87(2)(b) and § 87(2)(b). § 87(2)(b) was the operator of the vehicle, and is employed by § 87(2)(b). § 87(2)(b) provided a telephone statement to the CCRB, but refused to provide a last name or any further identifying information.

On September 15, 2016, § 87(2)(b) and § 87(2)(b) were riding in an § 87(2)(b) driven by § 87(2)(b). Prior to this incident, § 87(2)(b) fell down the stairs and injured his back. As a result of this injury, § 87(2)(b) has limited mobility, and cannot yaw, or oscillate about a vertical axis (i.e. spinal column), and on this date he was en route to § 87(2)(b) to receive a series of spinal shots. Approximately five minutes after departing § 87(2)(b) apartment, Sergeant Charles Cavallaro, PO Joel Ayala, and PO Edmundo Rivera allegedly stopped the § 87(2)(b) vehicle containing § 87(2)(b) and § 87(2)(b) (**Allegation A-Allegation I**). § 87(2)(b) was seated directly behind the driver's seat, and § 87(2)(b) was seated behind the front passenger seat. Sgt. Cavallaro allegedly asked § 87(2)(b) if he had any drugs in the vehicle, and an unidentified officer allegedly asked § 87(2)(b) if he had any weapons in the vehicle (**Allegation J and Allegation K**). Sgt. Cavallaro, PO Ayala, and PO § 87(2)(b) then allegedly searched the trunk of the vehicle (**Allegation L through Allegation T**).

§ 87(4-b), § 87(2)(g)

On April 17, 2017, panel 1C-2017 closed this case. On June 12, 2017, the CCRB received a letter from the complainant requesting that his case be reopened. On June 23, 2017, this case was reopened.

No arrests were made or summonses issued as a result of this incident.

There is no video evidence in regards to this case.

Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- According to OCA, § 87(2)(b) has no prior criminal convictions in the state of New York (**16 Board Review**).
- § 87(2)(b) (17 **Board Review**).
- On October 12, 2016, a Notice of Claim Inquiry returned negative results from the NYC Comptroller's Office (**19 Board Review**).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (**14 Board Review**).
- This is the first CCRB complaint to which § 87(2)(b) has been party (**15 Board Review**).

- Sgt. Cavallaro has been a member of service for eleven years and has thirty five previous allegations with no substantiations. § 87(4-b), § 87(2)(g)
- PO Ayala has been a member of service for three years and has thirteen previous allegations. PO Ayala has one substantiation in regards to CCRB case no. 201605007, for a stop. The CCRB recommended command discipline, and the NYPD disposition is pending. PO Ayala has one previous vehicle stop allegation.
- PO Rivera has been a member of service for three years and has twenty previous allegations. PO Rivera has one substantiation in regards to CCRB case no. 201605007, for a stop. The CCRB recommended command discipline, and the NYPD disposition is pending.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) and § 87(2)(b) alleged that three officers stopped their vehicle. They both described one officer as a white or Hispanic male with green eyes. § 87(2)(b) described this officer as standing 5'6" and who had brown hair. § 87(2)(b) described this same officer as standing 5'11" with an average build. § 87(2)(b) described the other two officers as white males, one who was 6'0" with blue eyes and the other as having dark hair. Due to his limited mobility, § 87(2)(b) was unable to see the officers well. § 87(2)(b) described these officers as Hispanic males who were shorter and stockier than the first officer. § 87(2)(b) could only describe the officers as two Hispanic males and one taller white male. § 87(2)(b) and § 87(2)(b) both described the officers' car as an unmarked sedan and everyone agreed that the officers were dressed in plainclothes.

PO Ayala, PO Rivera, and Sgt. Cavallaro were all assigned to Anti-Crime on the date of incident and were all dressed in plainclothes and assigned to an unmarked vehicle. Both Sgt. Cavallaro and PO Ayala noted in their memo books that they were assigned to a grey unmarked sedan and PO Rivera knew only that he was assigned to an unmarked vehicle. None of the officers had entries in their memo books locating them at the time of the incident and none of the officers recalled this interaction. None of the officers could account for where they were at the time of the incident.

NYPD Documents show that PO Ayala ran a warrant check on § 87(2)(b) name on September 15, 2016 at 2:38 p.m. PO Ayala, who is § 87(2)(b), could not account for why his name and tax identification number were tied to this name search. PO Ayala did not recall with whom he was working beyond working with PO Rivera.

PO Rivera, who is § 87(2)(b), was not certain with whom he was working at the time of the incident, but acknowledged it could have been PO Ayala and Sgt. Cavallaro. He recalled that later in the day he had an arrest and that Sgt. Cavallaro was working with him. While he recalled he was working in plainclothes and was assigned to an unmarked vehicle, he did not recall to which vehicle he was assigned.

Sgt. Cavallaro, who is a § 87(2)(b), did not recall with whom he was working at the time of the incident, but acknowledged that it could have been PO Ayala and PO Rivera. Approximately one hour after the incident, Sgt. Cavallaro was present for PO Rivera's arrest located at Steuben Street and 210th Street in the Bronx, approximately one mile away from the incident location.

§ 87(2)(g)
[REDACTED]

§ 87(2)(b) alleged that he was questioned by the 5'11" white male officer with green eyes. Sgt. Cavallaro is a white male standing 6'1" with green eyes. He is the only officer in this incident who had green eyes and was generally described as taller than the other officers. Therefore, **Allegation J** was pled to Sgt. Cavallaro.

§ 87(2)(b) and § 87(2)(b) also alleged that § 87(2)(b) was questioned by the officers. § 87(2)(b) described the officer as either white or Hispanic, 5'6"-5'8" tall, with brown hair. The investigation was unable to determine the identity of this officer because this description could be equally applied to both PO Ayala and PO Rivera, and neither officer acknowledged questioning § 87(2)(b). Therefore **Allegation K** was pled to "an officer."

Additionally, § 87(2)(b) and § 87(2)(b) alleged that all three of the officers opened the trunk of the vehicle and looked inside. Therefore **Allegations L-T** were pled to Sgt. Cavallaro, PO Ayala, and PO Rivera.

Allegation A- Abuse of Authority: Sergeant Charles Cavallaro stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B - Abuse of Authority: Sergeant Charles Cavallaro stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation C- Abuse of Authority: Sergeant Charles Cavallaro stopped the vehicle in which an individual was an occupant.

Allegation D- Abuse of Authority: Police Officer Joel Ayala stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation E- Abuse of Authority: Police Officer Joel Ayala stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation F-- Abuse of Authority: Police Officer Joel Ayala stopped the vehicle in which an individual was an occupant.

Allegation G- Abuse of Authority: Police Officer Edmundo Rivera stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation H- Abuse of Authority: Police Officer Edmundo Rivera stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation I- Abuse of Authority: Police Officer Edmundo Rivera stopped the vehicle in which an individual was an occupant.

Allegation J- Abuse of Authority: Sergeant Charles Cavallaro questioned § 87(2)(b)

Allegation L- Abuse of Authority: Sergeant Charles Cavallaro searched the vehicle in which § 87(2)(b) was an occupant.

Allegation M- Abuse of Authority: Sergeant Charles Cavallaro searched the vehicle in which § 87(2)(b) was an occupant.

Allegation N- Abuse of Authority: Sergeant Charles Cavallaro searched the vehicle in which an individual was an occupant.

Allegation O- Abuse of Authority: Police Officer Joel Ayala searched the vehicle in which § 87(2)(b) was an occupant.

Allegation P- Abuse of Authority: Police Officer Joel Ayala searched the vehicle in which § 87(2)(b) was an occupant.

Allegation Q- Abuse of Authority: Police Officer Joel Ayala searched the vehicle in which an individual was an occupant.

Allegation R- Abuse of Authority: Police Officer Edmundo Rivera searched the vehicle in which § 87(2)(b) was an occupant.

Allegation S- Abuse of Authority: Police Officer Edmundo Rivera searched the vehicle in which § 87(2)(b) was an occupant.

Allegation T- Abuse of Authority: Police Officer Edmundo Rivera searched the vehicle in which an individual was an occupant.

The civilians § 87(2)(b) and § 87(2)(b) all agree that they were in an § 87(2)(b) vehicle because § 87(2)(b) had to go to a doctor's appointment to obtain spinal injections. § 87(2)(b) had a spinal injury that limited his mobility. § 87(2)(b) was driving the vehicle and he was an employee of § 87(2)(b). § 87(2)(b) was assisting § 87(2)(b) with his appointments. PO Ayala, PO Rivera, and Sgt. Cavallaro stopped their vehicle. None of the officers went to the front driver's side window. Sgt. Cavallaro questioned § 87(2)(b) as to whether he was in possession of weapons. § 87(2)(b) attempted to show the officers that § 87(2)(b) was his client and he attempted to show them a roster of his clients. The officers never looked at the roster.

§ 87(2)(b) stated that § 87(2)(b) was not moving around the cab of the vehicle beyond playing with his cellphone prior to the stop. An officer (see below) questioned § 87(2)(b) as to what medications he was taking for his spinal pain, to which § 87(2)(b) responded oxycodone. The officer asked to see the medication and § 87(2)(b) informed him that he did not carry his prescriptions on him. The officers asked several “silly” questions, but he could not recall what they were. § 87(2)(b) felt that the officers did not believe that he had a spinal injury, so he told the officers that he had a walker in the trunk, to demonstrate that he had difficulty walking. The officers later told § 87(2)(b) that they pulled over the vehicle because someone had been robbing medical transport vehicles.

§ 87(2)(b) stated that Sgt. Cavallaro questioned him about weapons possession. He denied being in possession of weapons and Sgt. Cavallaro told § 87(2)(b) that he was too old to be robbing cabs, which § 87(2)(b) denied he was doing. An officer asked if they had anything in the trunk, and § 87(2)(b) informed him that § 87(2)(b) walker was in the trunk. The officers asked § 87(2)(b) to “pop” the trunk, which he did.

§ 87(2)(b) provided a telephone statement, but declined to cooperate further with the investigation. § 87(2)(b) stated that the officers asked § 87(2)(b) what was in the trunk and § 87(2)(b) informed them that it was § 87(2)(b)'s walker. § 87(2)(b) confirmed that the officers instructed him to “pop” the trunk, and that he complied.

Sgt. Cavallaro (**09 Board Review**), PO Ayala (**05 Board Review**), and PO Rivera (**06 Board Review**) did not recall this incident. Sgt. Cavallaro, PO Ayala, and PO Rivera did not recall stopping a vehicle. Sgt. Cavallaro did not recall questioning § 87(2)(b). Sgt. Cavallaro, PO Ayala, and PO Rivera are familiar with the incident location, but did not recall specifically visiting location on September 15, 2016. None of the officers could recall where they were at the time of the incident, and none of the officers had memo book entries documenting the incident time. Even after being confronted with the evidence that he had run § 87(2)(b)'s name through the NYPD warrant database, PO Ayala denied knowledge of the incident.

§ 87(2)(g)

[REDACTED]

Police stops of vehicles are legal only when "there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a

crime,” or “where the police have probable cause to believe that the driver . . . has committed a traffic violation.” (People v Robinson, 122 AD3d 1282 [4th Dept 2014]) (**23 Board Review**)

People v. De Bour, 40 N.Y.2d 201 (1976) Officers must have founded suspicion to ask questions of criminal conduct (**22 Board Review**).

People v. Galak 79 N.Y.2d 181 states that officers need probable cause to search a vehicle and there must exist a nexus between the arrest and the probable cause to search (**21 Board Review**).

People v. Newman 96 A.D.3d 34 states that an officer can search a vehicle for a weapon when there is a substantial likelihood that there is a weapon in the vehicle and that the weapon constitutes an actual and specific danger to the safety of the officer (**20 Board Review**).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation K- Abuse of Authority: An officer questioned § 87(2)(b)

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]

Squad: 12

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date